

## Message Text

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PAGE 01 STATE 191803  
ORIGIN L-03

INFO OCT-01 EB-08 ISO-00 SSO-00 AF-10 ARA-10 EA-10  
EUR-12 NEA-10 MMO-01 SIG-03 CIAE-00 INR-10  
NSAE-00 INRE-00 TRSE-00 OMB-01 /079 R

DRAFTED BY L/EB:CROH  
APPROVED BY EB:JATWOOD  
-----007755 282338Z/13  
O 282303Z JUL 78  
FM SECSTATE WASHDC  
TO ALL DIPLOMATIC POSTS IMMEDIATE

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E.O. 11652: N/A

TAGS: ETRN

SUBJECT: TAXATION OF INSTRUMENTS OF FOREIGN COMMERCE

1. APPLICATION OF A CALIFORNIA STATE PROPERTY TAX TO SHIPPING CONTAINERS OF JAPANESE FLAG VESSELS HAS BEEN CHALLENGED IN U.S. SUPREME COURT BY JAPAN LINES. THOUGH TAX LEVIED ONLY ON AVERAGE TIME CONTAINERS ARE IN CALIFORNIA, IT STILL DEPARTS FROM TRADITIONAL RULE THAT TAXES ON INSTRUMENTS OF FOREIGN COMMERCE SHOULD BE LEVIED ONLY BY FLAG STATE. TAX, IF UPHELD ON BROAD GROUNDS, COULD RESULT IN SPREAD OF SUCH TAXATION TO OTHER STATES AND OTHER TYPES OF PROPERTY, E.G., VESSELS, AIRPLANES. LIKELY RESULT WOULD BE RETALIATION BY OTHER COUNTRIES.

2. A POTENTIALLY SIGNIFICANT ISSUE IN EFFORT TO HAVE TAX OVERTURNED IS WHETHER OTHER COUNTRIES, OR THEIR POLITICAL SUBDIVISIONS, IMPOSE SIMILAR TAXES ON

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INSTRUMENTS OF FOREIGN COMMERCE OF FOREIGN FLAG CARRIERS (SHIPPING, AVIATION, RAILROAD OR TRUCKING LINES). IT IS ALSO IMPORTANT IF TAX LIABILITY IN HOST COUNTRY DEPENDS ON RECIPROCITY, I.E., WHETHER HOST COUNTRY'S FLAG CARRIERS ARE TAXED BY FOREIGN FLAG STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

3. ACTION REQUESTED: ALL POSTS ARE REQUESTED TO DETERMINE WHETHER HOST COUNTRY (OR ANY OF ITS POLITICAL SUBDIVISIONS) IMPOSES TAXES (OTHER THAN INCOME TAXES) ON INSTRUMENTS OF FOREIGN COMMERCE OF FOREIGN FLAG CARRIERS (E.G., SHIPPING CONTAINERS, VESSELS, PLANES OR THEIR FUELS). IF SUCH TAXES ARE IMPOSED ON FOREIGN FLAG CARRIERS, ARE THERE PROVISION FOR EXEMPTING CARRIERS WHOSE FLAG STATES DO NOT TAX HOST-COUNTRY'S FLAG CARRIERS? ARE THERE PROVISIONS FOR IMPOSING RETALIATORY TAXES IN EVENT HOST COUNTRY FLAG CARRIERS ARE TAXED BY FOREIGN-FLAG STATE OR ITS SUBDIVISIONS?

4. BECAUSE OF LITIGATING DEADLINES, WE NEED RESPONSE IF POSSIBLE BY AUGUST 2. WE RECOGNIZE SUBSTANTIAL POTENTIAL BURDEN ON POSTS, BUT WOULD HOPE THAT HOST GOVERNMENT SOURCES SUCH AS TRANSPORT OR TRADE MINISTRY COUNSEL'S OFFICES COULD FACILITATE TASK. POSTS WITH DIFFICULTY OBTAINING INFORMATION SHOULD PROVIDE STATUS REPORT. SOME POSTS HAVE ALREADY RECEIVED AND RESPONDED TO REQUEST FOR SIMILAR INFORMATION ABOUT AVIATION TAXES. THIS INFORMATION SHOULD BE SUPPLEMENTED BY SHIPPING, RAILROAD, AND TRUCKING TAX INFORMATION.

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## Message Attributes

**Automatic Decaptoning:** X  
**Capture Date:** 01 jan 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** INSTRUMENTS, TAXES, CARGO SHIPS, CONTAINERS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 28 jul 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1978STATE191803  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** CROH  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Expiration:**  
**Film Number:** D780311-0018  
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**Litigation History:**  
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**Message ID:** dd4d0477-c288-dd11-92da-001cc4696bcc  
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**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
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**Reference:** n/a  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
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**Review Withdrawn Fields:** n/a  
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**Status:** NATIVE  
**Subject:** TAXATION OF INSTRUMENTS OF FOREIGN COMMERCE  
**TAGS:** ETRN, EFIN, US, JA  
**To:** ALL POSTS  
**Type:** TE  
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**Review Markings:**  
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